

Research and Special Programs Administration**49 CFR Parts 172 and 173****[Docket No. HM-195]****Reclassification of Special Fireworks**

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration (RSPA), DOT.
ACTION: Withdrawal of Advance Notice of Proposed Rulemaking.

SUMMARY: This document terminates Docket HM-195. In the advance notice of proposed rulemaking (ANPRM) establishing Docket HM-195, RSPA solicited comments on the merits of a petition for rulemaking filed by the United States Display Fireworks Association (USDFA) (49 FR 45627, November 19, 1984). In the petition, the USDFA requested that RSPA reclassify special fireworks from class B explosives to class C explosives. By letter dated September 16, 1985, the USDFA withdrew their petition. Based on the withdrawal of the petition and other reasons discussed herein, this document terminates Docket HM-195 without issuance of a formal proposal.

FOR FURTHER INFORMATION CONTACT: Hattie L. Mitchell, Standards Division, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590, (202) 426-2075.

SUPPLEMENTARY INFORMATION: On November 19, 1984, RSPA published in the Federal Register an ANPRM soliciting comments on the merits of a petition filed by the USDFA to reclassify special (or display) fireworks from class B explosives to class C explosives (49 FR 45627). These fireworks are commonly used for public display on the Fourth of July and other special events. The USDFA summarized their reasons for the petition as follows: "(1) Make truck common carrier transportation economically available to the display fireworks industry, (2) make company vehicle transportation economic and time efficient; and (3) enhance safety by the elimination of placards entitled 'B Explosives'. The petition was published verbatim in its entirety in the ANPRM.

RSPA received over 80 comments on the ANPRM. The majority of the commenters, representing fire and safety emergency response agencies, objected

to the changes proposed in the petition. Most of these commenters expressed concern over the downgrading of certain safety controls for motor vehicles transporting special fireworks. They expressed strong opposition to allowing the display of DANGEROUS placards in place of EXPLOSIVE placards and no placards on motor vehicles containing

less than 1,000 pounds of special fireworks. They objected to elimination of the requirements for the attendance and surveillance of vehicles, special restrictions on parking the vehicle in certain areas, and the preparation of route plans. Many commenters attributed the excellent safety record for transporting special fireworks to these safety and expressed concern for the safety of firefighters responding to incidents involving fireworks if the safety controls are downgraded.

Commenters in favor of the petition expressed their concern over the deteriorating financial posture of the explosive industry resulting from Federal, State and local regulations, competition from explosive importers, and higher transportation rates, insurance premiums, raw materials and labor costs. One commenter maintained that present state-of-the-art materials and methods being used by fireworks manufacturers have "dissolved" the safety concerns experienced by earlier manufacturers.

On March 13, 1985, RSPA notified the USDFA of a preliminary determination that the petition should be denied based on RSPA's review of the petition and the comments received in response to the petition, and afforded the USDFA 30 days to provide additional information to support their petition or to make any comments on the comments received in response to their petition. The USDFA filed a letter dated April 12, 1985, responding to the comments received to the petition and again requesting some regulatory relief.

In order to assist RSPA in making a determination on whether some regulatory relief may be warranted on a selective basis for special fireworks, RSPA requested the U.S. Bureau of Mines to conduct testing of assorted special fireworks packed in various packaging configurations. The testing was conducted on May 28-31, 1985. Testing procedures conformed to the UN Test Series 6, which is used to determine how explosives react when involved in a fire or explosion. In addition, a special test exposing a truck partially loaded

with 500 pounds of special fireworks to an external fire source was conducted to determine whether this quantity of special fireworks would explode violently or just burn. Test results showed that the special fireworks functioned primarily by rapid combustion and therefore, are properly classed as class B explosives.

In a letter dated September 16, 1985, the USFA withdrew its petition without making any comment. Based on a review of the comments received in response to publication of the petition in the ANPRM, testing results, and the USDFA's withdrawal of their petition, Docket HM-195 is hereby withdrawn.

Issued in Washington, DC on January 28, 1986.

Under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,
 Director, Office of Hazardous Materials Transportation.

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